

**THE DEVELOPMENT
OF
TRADING CORPORATIONS**

**BY
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The following is a revised summary of an address on the above subject, delivered by Mr. Mackay before a meeting of the Finance Forum of the Young Men's Christian Association, on Tuesday evening, the 10th February, 1914:—

THE history of English trading corporation development is largely a history of the growth of English trade and commerce. It therefore includes a large part of the history of Great Britain and of the Empire for at least seven hundred years. A statement thereof in the compass of a single address would therefore be difficult, even for one whose knowledge of the subject and whose powers of logical compression were perfect. To master any subject in these days of advancing knowledge and of abounding literature is difficult. Mr. Bury in his edition of Gibbon's "Roman Empire" tells us that Finlay, the historian of Greece, after fighting in the Greek cause in the early part of the nineteenth century made some losses in real estate investments in that country. He found upon inquiry that his experience was the rule, not the exception. He therefore set himself to answer the question "Why," with the result that he produced by way of reply a "History of Greece," going back to 146 B.C. One distinct tendency of the present time is to regard men as superficial on all subjects on which they are not acknowledged masters with the equipment of an adequate special training. In view of Mr. Finlay's example and of this tendency ordinary men may well be restrained from rashly undertaking to deliver even the most modest of elementary addresses.

On the other hand, however, Lord Morley in one of his matchless essays, combats the doctrine that general knowledge is superficial knowledge, and that a man is superficial unless

he has mastered his subject by the lifetime application of a specialist. He quotes Whately to the effect that "it is a tendency to mistake general truths for superficial truths, or a knowledge of the leading propositions of a subject for a superficial knowledge." And he quotes Mill as follows: "To have a general knowledge of a subject is to know only its leading truths, but to know these thoroughly, so as to have a true conception of the subject in its great features." Notwithstanding current views even busy men may master the fundamental propositions of a subject sufficiently to broaden and to guide them, and to enable them to discuss it with some degree of intelligence and authority. Lord Morley's wise and weighty views are an encouragement to those who endeavor to resist the cramping specializing tendencies of the time, under which many of the active powers of men become atrophied by disuse.

The limitations of time and of a single address require that I shall confine myself largely to the historic background of modern corporation development. I shall therefore merely sketch in outline the rise and the most significant accompaniments and consequences of corporation enterprise deferring until a future occasion some consideration of the forms of corporation structures and the problems of corporation management, finance and ethics. A corporation may be roughly defined as a legal person, entirely distinct from the members composing it, created and endowed by law with perpetual succession and with a capacity to hold property, to contract debts, to carry on business, and to sue and be sued. Corporations in these days are unpopular; and an easy method of attaining unpopularity is to defend them or to seek to do justice to them. But justice is the ultimate foundation of social order, social confidence, and social progress. An obligation therefore rests on every man, regardless of his age, his influence or his means, to do what he can to maintain that foundation, the impairment of which begets strife and the destruction of which begets chaos and anarchy in human society. A conscious dignity is imported into the character of even the youngest man who overcomes the temptation to be unjust in his inner judgments by gratifying his own preju-

dices or by acquiescing easily in the popular prejudices of his time.

In view, therefore, of the wide-spread unpopularity especially of large commercial corporations, it is well to bear in mind that we owe a great debt to such companies. The development of Joint Stock Companies especially under the limited liability principle has led, during the past half century, to a degree of material progress that has changed the face of the world. It has been one of the greatest factors in building up the wonderful volume of England's foreign commerce. The stimulus it has given to production and invention with its consequent great increase in wealth, and its achievements in linking together all parts of the world, have greatly raised the standard of life and the means of maintaining it in all classes of society. The concomitants of modern educational and other humanizing institutions have elevated, refined and humanized society. Individualistic as distinct from corporate effort could never have achieved these results in the same period of time.

It is also interesting to bear in mind that the profession of diplomacy, which on the whole, notwithstanding its many stains, has contributed so greatly to the peace and comity of nations, was born of the necessities of the early chartered companies. The first of the resident English ministers at the courts of Russia and Turkey were appointed at the instance of the old Russia and the old Turkey chartered companies, while the Russia company also bore the expense of the Embassy. The institution of ambassadorial representation at foreign courts so called into existence, has since spread, with, on the whole, beneficent influences, throughout the whole of the civilized world. This is no mean consequence of early corporation enterprise.

Further, in the "Growth of Empire" we owe to corporate enterprise a great and inextinguishable debt. Notwithstanding the pre-eminence in the arts of government which Great Britain has for many centuries enjoyed, her rulers in the closing part of the eighteenth century lost an empire in North America, while, during substantially the same period

of time a band of courageous English traders incorporated as the "East India Company" won for her the Imperial compensation of the splendours of India. During the intervening century the enlightened administration of England has accomplished the redemption from misgovernment and internecine strife with their appalling oppression and wrongs of 250 millions of helpless orientals who by nature are unfitted to govern or protect themselves. That work of redemption forms the background of an unparalleled display of high motive, of fortitude, of devotion and of heroism on the part of a great army of honoured Englishmen. Their example and their achievements have given birth to influences and moral powers within the Empire that will be felt throughout remotest time and to which if we could but trace the stream aright we might even now find ourselves indebted for much of what we hold dearest. As an example of the high conception of England's mission in India and of the high motives by which great Englishmen are moved in that Eastern land I may quote the lofty words of Lord Curzon on the occasion of his farewell:—"To fight for the right, to swerve neither to the right hand nor the left, never to let your courage grow dim, but to remember that the Almighty has placed your hand on the greatest of His ploughs, in whose furrow the nations of the future are germinating and taking shape, to drive the blade a little forward in your time, and to feel that somewhere among these millions you have left a little justice or happiness or prosperity, a sense of manliness or moral dignity, a spring of patriotism, a dawn of intellectual enlightenment, or a stirring of duty where it did not before exist—that is enough, that is the Englishman's justification in India." This great political heritage and the opportunity its possession has offered for the accomplishment of England's greatest redemptive work, with the moral influence on the men of the Empire which that work has begotten, leave us greatly in debt to the old East India Company. Great stretches of Imperial domains have been brought under the British flag in Africa as a result of the corporate enterprise of chartered companies on that continent; while in our own land the activities

of the Hudson Bay Company have played no small part in preserving to us through the vicissitudes of past history, the splendid sweep of Canadian domains from the Hudson Straits to the Rocky Mountains. These princely services of early and later corporations to the Empire, to our own country, and to the world at large, should not be forgotten or ignored. Nor is this reminder of the debt we are under in respect of these great services a mere sentimental duty that we owe the past. It has a vital relation to the future. The political, material and moral gains in question have come down to us through the efforts of great men who employed the organizing and co-operative powers of corporations to secure them—and without this machinery of action they could not have been secured for us. Let us take heed therefore that in the excesses of the present day reaction against corporations and their works, we do not destroy the virility and capacity of corporation agencies to carry on for the benefit of our children's children the works that have so greatly benefitted us. With changing conditions the sphere and direction of corporate effort may alter, but that such virile forces are bound to find great work to do for the future, if they are granted the necessary freedom of action, cannot be gainsaid. Too great reliance on substitutionary governmental and other forms of democratic co-operative effort is not yet justified by experience. We actually possess the advantages won for us in the past—we can only hope for corresponding progress in the future through other agencies. The ancient fable may well be borne in mind of the dog who dissatisfied with the bone in his mouth when he saw what looked like a bigger one in the water dropped the reality for a shadow that was powerless to satisfy his need.

The modern corporation is the outcome of nearly one thousand years of slow development. While certain types of corporations can be traced back in English history to before the time of the Norman Conquest, there is no certainty that corporations for the promotion or regulation of trade existed prior to the time of the Conquest.

The first type of trading corporation was that known as the "Gild Merchant." The Gild Merchant, under a charter usually

from the Crown, was charged with the duty of controlling and regulating the merchants' interests and operations in the particular town with respect to which it was conferred. With the development of industry it was followed in time by the type known as the "Craft Merchant." These in turn assumed control of the interests of particular crafts or trades within the limits of the towns in which their jurisdiction lay. The next development was that which is known as the "Regulated Company." The early Regulated Companies were formed chiefly for the purpose of overseas commerce. The members thereof usually traded on their own account, with their own capital, and at their own risk, but under the protection of the Company to which they belonged. Membership called for payment into the corporate funds of admission and maintenance fees as the price of the advantages obtained. Next in order came the "Joint Stock Company," first with unlimited and then with limited liability. Under the Joint Stock Company type of organization the corporation traded on a joint stock or capital contributed by the members, who shared the profits and bore the losses in the ratio of their contributions. The evolution of the modern limited liability principle was again a work of time. Various methods for limiting in varying degrees the liability of shareholders were tried before the evolution of the present day principle with which all are familiar. During the earlier days of corporation enterprise disputes were occasionally settled by peculiarly attractive methods. Under an Anglo-Dutch corporation quarrel in 1652 four arbitrators were appointed to settle the matters in dispute upon terms providing among other things that "Unless they agree upon sentence before 1st August, 1664, the arbitrators shall from that day be shut up in a chamber by themselves, without fire, candle, meat, drink or any other refreshments until they shall come to an agreement." As the result an award was made against the Dutch to the amount of £97,873 Stg., a sequel which perhaps warrants the inference that the Dutch arbitrators got hungry first or at any rate anticipated they would. Again in 1655 one Thomas Skinner was awarded by the House of Lords the sum of £5,000 Stg. as damages in respect of a claim against the East India

Company while the House of Commons with its traditional respect for the Lords immediately afterwards committed him to the Tower in respect of the same claim.

During the last thirty years, especially in the United States of America, various advanced forms of corporate organization have been developed. The "Holding Company," the "Trust" and the "Pool" have been the most ingenious and potent influences for the extension of American corporate activity during this time. The "Trust" and the "Pool", however, are not in themselves corporate structures, but are merely applications to corporate structures of certain methods for the extension of the influence, the operations and the profits of such.

The principal function of the "Holding Company," which itself is a corporation, is that of acquiring and holding controlling capital stock voting interests in two or more other corporations. The effect of this is to secure to the Holding Company and therefore to those who control it, an effective control of and a common policy for the subsidiary corporations without any disturbance of their corporate status and without the publicity and the sometimes costly reorganization attendant upon an amalgamation. It is perhaps interesting to note that while the control of a corporation usually involves the legal ownership of a majority of the outstanding voting capital stock, it is possible for the owners of a minority stock interest to secure control through the agency of the Holding Company.

For example "X" corporation has outstanding 1,000 shares of capital stock with voting rights. The several holders of 501 shares therefore control it. Let these holders, however, transfer their shares to "Y" holding company for say 501 shares of its capital stock, and the result is that the control of the holding company itself passes into the hands of the former owners of 252 shares of "X" Company's capital stock. The owners of a minority interest of approximately 25% of the capital stock of "X" Company may therefore obtain control of the Company in this way by employing the machinery of the intervening Holding Company.

The "Trust" and the "Pool" have assumed various forms. The "Trust" was originally formed by the owners of a majority

of the voting capital stock in two or more corporations transferring their shares with the voting rights thereon to Trustees, who issued in exchange therefor certificates insuring to the transferring stockholders their proportionate shares of dividends. The Trustees acquired thereby the voting rights necessary to control the directorate, and as a consequence the management, policy and operations of the companies affected. The "Trust," therefore, accomplishes the same result as the Holding Company without employing corporation machinery for the purpose.

The "Pool" is an elastic term which is applied to a variety of inter-corporation arrangements usually designed to control prices and to divide among the participating corporations the production, the out-put, the gross profits or the net earnings of the industries covered. That is to say, that under "Pooling" arrangements prices are fixed and regulated and specific shares in the total production, the total out-put, the total gross profits, or the total net earnings of the industries affected are by agreement allotted to the participating corporation members with the effect of eliminating competition as between themselves, of diminishing its severity with outsiders, of preventing over-production, of maintaining prices and of increasing profits. Sometimes under "Pooling" arrangements territory is divided for business purposes among the participating members with the same objects and effects as the foregoing.

The "Voting Trust" is also a comparatively recent development in corporate organization. Under a Voting Trust Agreement the owners of the majority of the voting capital stock of a corporation transfer their shares with the voting rights thereon to Voting Trustees, receiving in exchange therefor Trust Stock Certificates, insuring to the transferors their proportionate shares of dividends. The effect is to vest the control of the particular corporation affected in the Voting Trustees who, under the powers usually conferred upon them, elect the Board of Directors and secure thereby the control of the policy and operations of the Company. Recent legislation and recent judicial decisions in the United States, have, however, sounded the death knell for the time being of much of

the type of corporate activity represented by Holding Companies, Trusts and Pools.

The whole field of production, distribution and transportation with their various auxiliaries, is now largely held by the corporate type of organization.

There are many advantages attendant on this type of organization as compared with the partnership type. The limitation of the risks of shareholders as compared with those of partners has greatly facilitated the task of raising permanent capital for such enterprises. The powers of corporations enabling them to create and to issue many different and ingenious classes of securities to the purchase of which the investing public has been gradually educated, have greatly facilitated the raising of temporary or terminable capital. Amalgamations of industries covering wide areas of territory and activity can be effected through corporation agencies on a scale quite impossible under the partnership type of structure. The powers of directors, although difficult to control, may be much more easily and effectively limited and controlled than the powers of partners; while the death and the withdrawal of old members and the admission of new members are not attended with the onerous difficulties and penalties that attach to the partnership mode of procedure. Corporate structures being thus fitted for the most effective and economic participation in the great and increasing business of the world are bound to survive. Many abuses have crept into their administration, and in consequence great and frequently well-deserved censure has often been meted out to them. Meeting, however, as they do, a necessity of the times, they cannot be abolished. Wholesale hostility against corporations because of these abuses, is no more reasonable than wholesale antagonism to governments would be, by reason of their frequent failure to govern justly. Reasonable regulation of corporate powers, together with personal penalties for corporate wrongdoing, rather than destruction of corporate interests or capacities is the remedy for such abuses as have arisen. Responsibility lies at the root of all healthy social growth and the paternalism that would control and regulate every corporate

operation in the specious interest of a helpless public would also destroy the sense of responsibility and work incalculable and irretrievable harm. The interests of corporations as such, cannot be separated from those of the public at large. The savings of the thrifty mass form a large part of the capital of the aggregate corporate structures. The savings of mankind must always be invested if they are to be made reproductive and the labour of mankind must be employed if orderly society is to continue. The maintenance and development of corporate activities are necessary to provide an adequate field for such investments and employment. Uncontrolled hostility against, and needlessly harsh and punitive legislative measures against corporate interests can only, therefore, react injuriously upon the interests of the public at large. The old individualistic era is a thing of the past, and whatever unknown developments are in front of us, it is inconceivable that the corporate type of structure will become obsolete. The day of a substitutionary socialistic paradise is still an idle dream, founded as most sober minded men believe, on a fallacious view of the unchanging elements in human nature. It is necessary, therefore, for all young men who wish to participate in the great business of providing for the needs of the world to fit themselves for the corporate type of service.

While this calls for the development among young men of a wide variety of special equipment adapted to the diverse needs of modern complex organizations, there are four basic qualifications common to all high-grade service which are necessary to "deserved" success. It is a commonplace to mention them, and yet many people live as though in ignorance of them. Capacity and fixed purpose to perform efficiently the duty assigned, assumed or aimed at are two qualities that must be cultivated. The price of this is work, including to no small extent the constant discipline of study and of will. There are moreover great additional rewards in methodical study whatever the motive may be. Whatever barriers the artificial conventions of society, or the natural affinities of men, may erect between men of equal powers, every faithful student may meet in his own library, on equal terms, the greatest minds of time.

The broadening and elevating effects of such an association are as certain as the law of gravitation. In Lord Morley's Romanes lecture for 1897 on Machiavelli he quotes a classic passage from a letter of the great but sinister Florentine. He had fallen from high office and in misfortune he writes to a friend describing how he spent his time partly in work and partly in unworthy buffoonery during the day. He then continues "But when evening falls I go home and enter my writing room. On the threshold I put off my country habit, filthy with mud and mire, and array myself in royal courtly garments; thus worthily attired, I make my entrance into the ancient courts of the men of old, where they receive me with love, and where I feed upon that food which only is my own and for which I was born. I feel no shame in conversing with them and asking them the reason of their actions. They, moved by their humanity, make answer; for four hours space I feel no annoyance, forget all care; poverty cannot frighten, nor death appal me. I am carried away to their society." The dignity of the evenings here described and the great rewards to heart and intellect which such pursuits confer are open to every man who desires them. The steady discipline of the will when it is directed to the accomplishment of worthy purposes evolves the highest type of rational beings.

Capacity of sound judgment—one of the rarest and most valuable of faculties—must be developed in the slow and painful school of self-discipline and experience. It must be fashioned, tempered and tested in the multitudinous affairs of life. It should be treasured as a pearl of great price. To develop it man must launch out on the faith of it, and when it fails the causes must be sought out and analysed, not in a spirit of despairing lamentation, but as a means for the further training and strengthening of it. Its conclusions should never be abandoned for ignoble gain because the double penalty of destruction of self respect and destruction of the faculty itself are inseparably attached thereto. They should be maintained when founded on reason and conscience against all coercion and temptation. The faculty of trustworthy judgment makes every man a master of himself and a leader of

others; the loss of it leaves a man the mere creature of circumstances, dependent on the conflicting counsels of others in every crisis in life.

Rectitude of character is another indispensable element in lasting and in "deserved" success of which the experience of time and of conscience will convince every man. To those who cultivate these fundamental qualities of life the future need not be darkened by fear. Nor need popular theories of age and of opportunity cause disquiet. The lessons of human experience are deeper and wider than the random generalisations that are founded upon it. While there is much of mystery in it—it yet encourages the belief that persistency of purpose overcomes in time the drags of obscurity, of poverty, of prejudice, of mistakes and of disappointments. Success has often been "only the last term of what looked like a series of failures." And behind the human effort there lies a great sustaining. For despite the wonderful accomplishments through the long past of the settled purposes of men through means apparently fashioned and controlled by themselves, it yet remains true that the destinies of men are shaped by a higher, an inscrutable but a gracious Power, and all who cultivate these simple duties may confidently entrust themselves to the all-embracing and overruling purposes of the Most High.

JOHN MACKAY.

For the study of the origin, the growth and the constitution of corporations, the following works among others may be consulted :—

Adam Smith's *Wealth of Nations*. Chap. I, Book V.
W. R. Scott's *Joint Stock Companies to 1720*.
Cawston & Kean's *Early Chartered Companies*.
Cunningham's *Growth of English Industry and Commerce*.
Sir Inglis Palgrave's *Dictionary of Political Economy*.
The Encyclopedia Britannica.
Lindley's *Partnership Law and Company Law*.
Halsbury's *Laws of England*.

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